

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

OSCAR GONZALEZ-MILANEZ,

Defendant.

CASE NO. 8:10CR251

TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 67). The government adopted the PSR (Filing No. 68). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the 2 criminal history points assessed in ¶ 59 for a 1995 offense. A jail term of 60 days was imposed for the probation revocation relating to the prior offense on July 29, 1999. The Defendant objects, arguing that the instant offense began in 2007, rather than in 2003, and therefore the prior offense listed in ¶ 59 falls outside the 10-year period and should not be counted. Under U.S.S.G. § 4A1.1 the date sentence was imposed, rather than the date of the offense, is used in calculating the 10-year period. U.S.S.G. § 4A1.1 application note 2. Because the operative date is July 29, 1999 (the date sentence was imposed), the objection is denied. The argument that the instant offense began in 2007 as opposed to 2003 is immaterial.

IT IS ORDERED:

1. The Defendant's objections (Filing No. 67) to the PSR are denied;

2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final; and

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 7th day of February, 2011.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge